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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KRISHNA OKHANDIAR, an individual, and
REMILIA CORPORATION LLC, a Delaware
limited liability company,

Plaintiffs,

V.

JOHN DUFF III, an individual,
HENRY SMITH, an individual, and
MAXWELL ROUX, an individual.

Defendants.

Case No. 2:23-cv-1409- APG-EJY

**DEFENDANTS' MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(2)
& 12(b)(3), OR ALTERNATIVELY TO
TRANSFER PURSUANT TO 28 U.S.C.
§§ 1406(a) OR 1404(a)**

Defendants *John Duff III* (“*Duff*”), *Henry Smith* (“*Smith*”), and *Maxwell Roux* (“*Roux*,” and collectively with *Duff* and *Smith*, “*Defendants*”) move the Court to dismiss Plaintiffs’ Complaint pursuant to Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction, or alternatively to dismiss pursuant to Rule 12(b)(3) and 28 U.S.C. § 1406 because venue is improper in this District. If dismissal is not granted, then the action should be transferred to the

1 District Court for the District of Delaware in the interests of justice and for the convenience of the
 2 parties and witnesses pursuant to either 28 U.S.C. § 1406(a) or 28 U.S.C. § 1404(a).

3 I. INTRODUCTION

4 Plaintiff Krishna Okhandiar (“Okhandiar”), the sole member of the other plaintiff Remilia
 5 Corporation LLC, a *Delaware* company (“Remilia”), recently moved to Nevada. (Compl. ¶¶ 1-3.)
 6 That, however, is the only connection between this jurisdiction and any Defendant or fact relevant
 7 to this case. Of course, a plaintiff’s voluntary place of residence is irrelevant to a court’s exercise
 8 of jurisdiction over non-resident defendants. The focus is on the extent of the defendants’
 9 connections, if any, to the forum state. Here, there are none.

10 Plaintiffs do not assert a basis for an exercise of general jurisdiction; nor could they. None
 11 of the Defendants are residents of Nevada, and none have ever owned any property here. They are,
 12 respectively, citizens of New York, Montana, and New Zealand. (Compl. ¶ 4-6.) With the
 13 exception of a single, brief and completely unrelated personal visit to Las Vegas *before* the parties
 14 even contemplated doing business together, none of the Defendants has ever even visited Nevada,
 15 much less conducted any business here. They are certainly not “domiciled” in this state.

16 Likewise, no ground exists for an exercise of specific jurisdiction. None of the Defendants
 17 negotiated or signed any of the alleged contracts in Nevada. While the Complaint avers that
 18 Remilia’s principal place of business is in Okhandiar’s home at 89 Arthur Hills Court in Las Vegas
 19 (Compl. ¶ 2), that allegation is not just disingenuous, it is insufficient to prove jurisdiction over
 20 the Defendants. Okhandiar did not register his home address as Remilia’s place of business until
 21 November 15, 2023, more than two months after filing this Complaint¹ and after the Defendants
 22 had already filed their own lawsuit against him and Remilia in Delaware.² Defendants did not know
 23 that Okhandiar had moved to Nevada until he filed the Complaint. None of the work that he
 24 alleges they performed as “independent contractors” for the company and none of the acts he alleges

25 ¹ See Remilia Corporation LLC Entity Information report printed from SilverFlume Nevada’s
 26 Business Portal, <https://esos.nv.gov/EntitySearch/BusinessInformation> [last accessed 1/12/2024],
 27 attached as Exhibit 1 to the Declaration of Jonathan P. Hersey (hereinafter “Hersey Decl.”).

28 ² See Hersey Decl. ¶ 2; *Roux, et al. v. Okhandiar, et al.*, Court of Chancery of the State of Delaware,
 C.A. No. 2023-0961, filed Sept. 22, 2023, and removed to federal District Court for the District of
 Delaware, Case No. 1:23-cv-01056-GBW, on Sept. 27, 2023.

1 they committed in furtherance of his manufactured “conspiracy” occurred in or was purposefully
 2 directed at this state. (Compl. ¶ 10.) Indeed, the “virtual server” that Okhandiar alleges the
 3 Defendants wrongfully seized control of (*id.*) is not located in Nevada and was never accessed by
 4 any of them from Nevada. The mere fact that Okhandiar chooses to pay Remilia’s invoices received
 5 from the New York-based virtual server hosting company from his home is not enough to
 6 demonstrate jurisdiction or proper venue over Defendants in this state.

7 All notions of due process, substantial justice and fairness dictate that the Complaint should
 8 be dismissed for lack of personal jurisdiction and improper venue. But even if the Court could
 9 exercise personal jurisdiction over Defendants, and even if it determines that venue could be proper
 10 here, the matter should still be transferred to the District of Delaware in the interests of justice and
 11 for the convenience of the parties and witnesses. Okhandiar chose to incorporate Remilia in
 12 Delaware. He has no problems conducting his businesses there and availing himself of its laws and
 13 protections. He should not be heard to complain about litigating there where a lawsuit involving
 14 the same parties and issues is already pending.

15 **II. BACKGROUND AND JURISDICTIONAL FACTS**

16 Plaintiffs’ claims against Defendants arise from the parties’ joint formation and operation
 17 of a crypto-based non-fungible token (NFT) art collective venture referred to as “Remilia.”³
 18 According to the Complaint, Okhandiar is the sole owner and member of the Delaware company,
 19 Remilia Corporation LLC. Compl. ¶¶ 2-3 & 12-13. While Plaintiffs admit that each Defendant
 20 had a “managerial role” with the company (*id.* ¶ 45), Plaintiffs allege that because they each “failed
 21 to perform at an adequate level,” they were demoted to “individual contributor” roles and made to
 22 sign non-disclosure agreements. E.g., Compl. ¶¶ 19-20; 26-27, 34-35 & 45-46. The Complaint
 23 avers that Defendants breached their non-disclosure agreements with Remilia by disclosing the
 24

25 ³ Defendants refute Plaintiffs’ mischaracterization of Remilia as a company and whose assets are
 26 solely owned by Okhandiar. Based on the facts alleged with particularity and supported by a trough
 27 of supporting documents in their own pending lawsuit against these Plaintiffs in Delaware,
 28 Defendants were founders, shareholders and employees of the Remilia collective venture. For the
 purposes of this Motion, however, Defendants focus on the nature of Plaintiffs’ exaggerated claims
 for relief and the paucity of factual allegations supporting an exercise of jurisdiction or proper
 venue in this Court.

1 company's plans to raise capital (e.g., *id.* ¶¶ 47-49 & 125-142), attempted to extort equity and
 2 compensation from Plaintiffs (*id.* ¶¶ 10, 110, 173, & 186), and conspired to "surreptitiously and
 3 wrongfully" seize control of certain of Remilia's NFT assets, social media accounts and codebases,
 4 and to interrupt its business. E.g., *id.* ¶¶ 10, 52-62, 69, 94, 97, 108, 120, 147-174 & 180-189.

5 Plaintiffs' "factual" allegations of jurisdictional are sparse and inappropriately conclusory
 6 at best, merely asserting that Defendants "purposefully directed their activities toward Nevada by
 7 ... purposely agreeing to perform work as independent contractors for a business that conducts
 8 operations in Nevada, forming a conspiracy to seize control of virtual servers used for a business
 9 operating from Nevada and purchased by the business from Nevada, and furthering the goals of the
 10 conspiracy by causing extortionate demands and communications about those demands to be sent to
 11 Remilia in Nevada. Compl. ¶ 10. Plaintiffs' venue allegation are worse, saying only that "a
 12 substantial part of the events giving rise to the claims occurred in this District." *Id.* ¶ 11. No facts
 13 support these claims.

14 As detailed further below in the Motion and in the Defendants' supporting declarations,
 15 Defendants have **no** connection whatsoever to Nevada, and particularly no connections with regard
 16 to the Remilia venture. Duff is a citizen and permanent resident of New York.⁴ Smith is a citizen
 17 and permanent resident of New Zealand.⁵ Roux is a citizen and permanent resident of Montana.⁶
 18 Defendants have never held any bank accounts or owned any personal or real property in Nevada.
 19 Duff Decl. ¶ 3; Smith Decl. ¶ 3; Roux Decl. ¶ 3. Even assuming Defendants acted as "independent
 20 contractors," which Defendants dispute, Defendants did not perform any activities or operations in
 21 Nevada, or otherwise have any contacts with or perform any services there. *See* Duff Decl. ¶¶ 3-4
 22 & 16; Smith Decl. ¶¶ 3-4 & 14; Roux Decl. ¶¶ 3-4 & 12.

23 Remilia has always been a Delaware company. None of the assets Defendants are accused
 24 of having seized were located in Nevada (Duff Decl. ¶¶ 17-19 & Exhs. 1 & 2), and Defendants did
 25 not even know that Okhandiar had moved his home from Chicago to Las Vegas until after Plaintiffs
 26

27 ⁴ Declaration of John Duff III ("Duff Decl.") ¶ 2.
 28 ⁵ Declaration of Henry Smith ("Smith Decl.") ¶ 2.
⁶ Declaration of Maxwell Roux ("Roux Decl.") ¶¶ 2 & 11.

1 filed this Complaint. Duff Decl. ¶ 16; Smith Decl. ¶ 14; Roux Decl. ¶ 12. That is why Defendants
 2 had sent their pre-litigation demand letter (which Plaintiffs’ improperly attempt to conflate as
 3 unlawful extortion) to Okhandiar home in Chicago, Illinois and to Remilia’s agent for service of
 4 process in Delaware. Compl. ¶¶ 89-90; Hersey Decl. ¶ 3.

5 None of the facts relate to and support an exercise of jurisdiction based on the alleged claims
 6 for relief, regardless of whether sounding in contract or tort. Defendants did not enter any agreement
 7 with Plaintiffs while in Nevada, or enter into agreements with the knowledge that Plaintiffs were
 8 citizens of Nevada. *See* Duff Decl. ¶¶ 5, 12, 16; Smith Decl. ¶¶ 6-7, 10, 14; Roux Decl., ¶¶ 5, 8, 13.

9 Plaintiffs did not seize any assets or accounts located in Nevada or by activities performed
 10 in Nevada or directed here. The virtual server hosting company, DigitalOcean, is a Delaware
 11 corporation with its principal place of business in New York, New York which provides a cloud
 12 based platform to store, develop, and host data. *See* Duff Decl. ¶¶ 17-18 & Exh. 1. It does not even
 13 have any servers located in Nevada. *See id.* at ¶ 19 & Exh. 2.

14 III.

15 **LEGAL STANDARDS**

16 A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2) asks the court to
 17 dismiss an action over which it lacks personal jurisdiction. Fed. R. Civ. P. 12(b)(2). The burden of
 18 establishing jurisdiction lies with the plaintiff. *See Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th
 19 Cir. 2015). To avoid dismissal, the plaintiff must allege plausible facts demonstrating a *prima facie*
 20 basis for personal jurisdiction. *See Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008).
 21 “[M]ere ‘bare bones’ assertions of minimum contacts with the forum or legal conclusions
 22 unsupported by specific factual allegations will not satisfy a plaintiff’s pleading burden.” *Swartz v.*
 23 *KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007) (holding that conclusory allegations that defendants
 24 directed correspondence at the forum state are insufficient to establish *prima facie* grounds for
 25 jurisdiction).

26 Likewise, Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406(a) authorize
 27 dismissal or transfer to a different federal district court “when venue is ‘wrong’ or ‘improper.’” *Atl.*
 28 *Marine Const. Co., Inc. v. U.S. Dist. Court for W. Dist. of Texas*, 571 U.S. 49, 53 (2013). Again,

1 the “[p]laintiff bears the burden of establishing proper venue,” and the “court is not required to
 2 accept the pleadings as true and may consider facts outside the pleadings.” *Jasper v. Martinez*, No.
 3 217CV03026GMNVCF, 2018 WL 3997262, at *2 (D. Nev. Aug. 21, 2018) (citing *Piedmont Label*
 4 *Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979)).

5 Even if venue is proper under Rule 12(b)(3), the court may nevertheless exercise its
 6 discretion to transfer the case to a different federal district court where the case might otherwise
 7 have been brought, and “for the convenience of parties and witnesses, [and] in the interest of
 8 justice.” 28 U.S.C. § 1404(a).

9 IV.

10 **THIS COURT LACKS PERSONAL JURISDICTION OVER DEFENDANTS**

11 A district court may only exercise personal jurisdiction over defendants who are “subject to
 12 the jurisdiction of a court of general jurisdiction in the state where the district court is located.”
 13 Fed. R. Civ. P. 4(k)(1)(A). To satisfy that requirement, the court’s jurisdiction over an out of state
 14 defendant must be consistent with both the forum state’s long arm statute and the requirements of
 15 due process. *Walden v. Fiore*, 571 U.S. 277, 283 (2014).

16 Nevada has authorized its courts to exercise jurisdiction over persons “on any basis not
 17 inconsistent with . . . the Constitution of the United States.” Nev. Rev. Stat. §14.065 (2022); *Rio*
 18 *Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007 (9th Cir. 2002) (holding that the reach and
 19 extent of Nevada’s long arm statute is coterminous with the extent of personal jurisdiction permitted
 20 by Constitutional due process). Thus, to determine whether jurisdiction exists over Defendants in
 21 this case, the touchstone question is whether an exercise of jurisdiction “comports with the limits
 22 imposed by federal due process.” *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014) (quoting
 23 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 464). Due process requires that a defendant have
 24 sufficient “minimum contacts” with the forum “such that the maintenance of the suit does not
 25 offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326
 26 U.S. 310, 316 (1945). In this regard, constitutional jurisprudence has established two types of
 27 “minimum contacts”—those consistent and long-lasting enough to give rise to an exercise of
 28 general jurisdiction regardless of the nature of the asserted claim, and those less permanent but still

1 substantial and purposefully directed at the forum to support an exercise of specific jurisdiction
 2 with regard to the complaint's pleaded cause(s) of action. *Helicopteros Nacionales de Colombia,*
 3 *S.A. v. Hall*, 466 U.S. 408, 413–15.

4 For the reasons discussed below, Plaintiffs have not and cannot meet their burden to
 5 demonstrate either general or specific jurisdiction over any of the Defendants.

6 **A. Defendants Are Not Subject to General Jurisdiction in Nevada.**

7 Because general jurisdiction is a mechanism for exercising jurisdiction without regard to
 8 the specific claims for relief, “only a limited set of affiliations with a forum will render a defendant
 9 amenable to all-purpose jurisdiction there.” *Daimler AG, supra*, 571 U.S. at 137. With respect to
 10 individuals, general jurisdiction is appropriate only when a defendant is domiciled in the forum
 11 state. *Id.* Domicile is established by a physical presence in the state combined with intent to remain
 12 there. *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989)).

13 Here, Plaintiffs concede that none of the Defendants are domiciled in Nevada. *See ECF No.*
 14 1, ¶¶ 4-6. They are citizens and permanent residents of Montana, New York, and New Zealand,
 15 respectively. *See Roux Decl.* ¶ 2; *Smith Decl.* ¶ 2; *Duff Decl.* ¶ 2. An exercise of general jurisdiction
 16 over them would violate their federal and Nevada constitutional due process rights.

17 **B. Defendants are not Subject to Specific Jurisdiction in Nevada.**

18 Because the Court lacks general jurisdiction, Plaintiffs “must demonstrate that [their]
 19 allegations establish a *prima facie* case for specific jurisdiction” over Defendants. *Fed. Trade*
Comm'n v. Consumer Defense, LLC, 2018 WL 2741039, at *5 (D. Nev. 2018) (citing *Boschetto*,
supra, 539 F.3d at 1015). When assessing specific jurisdiction, courts focus on “the relationship
 21 among the **defendant**, the **forum**, and the **litigation**.” *Walden, supra*, 571 U.S. at 283-84 (internal
 22 citations and quotations omitted; emphasis added). Because the “primary concern” is the burden
 23 that an exercise of jurisdiction will place on the defendant, the plaintiff’s relationship to the forum
 24 and the defendant’s relationship to the plaintiff or third parties are “an insufficient basis for
 25 jurisdiction.” *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017)
 26 (quoting *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 264 (2017) and *Walden, supra*,
 27 at 286). Due process requires that a defendant may only be haled into foreign court based on his
 28

1 own affiliation with the foreign state, not on “random, fortuitous, or attenuated” contacts the
 2 defendant makes by interacting with others affiliated with the state. *Burger King, supra*, 471 U.S.
 3 at 475 (internal citations omitted).

4 There are three requirements for a court to exercise specific jurisdiction over a nonresident
 5 defendant:

6 (1) the defendant must either “purposefully direct his activities” toward the forum
 7 or “purposefully avail[] himself of the privileges of conducting activities in
 the forum;”

8 (2) “the claim must be one which arises out of or relates to the defendant’s forum-
 9 related activities;” and

10 (3) “the exercise of jurisdiction must comport with fair play and substantial justice,
 11 i.e., it must be reasonable.”

12 *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002). “The plaintiff bears the burden
 13 of satisfying the first two prongs.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802
 14 (9th Cir. 2004). Only then does the burden shift to the defendant to present a “compelling case”
 15 that the exercise of jurisdiction would not be reasonable. *Id.* (quoting *Burger King, supra*, 471 U.S.
 16 at 476–78).

17 A plaintiff’s personal jurisdiction allegations may not be “merely conclusory, but must
 18 instead assert particular jurisdictional facts that establish the necessary ties” between the defendant
 19 and Nevada. *See Rueckl v. InMode, Ltd.*, No.: 2:19-cv-02186-KJD-NJK, 2020 U.S. Dist. LEXIS
 20 132865, at *5 (D. Nev. July 27, 2020) (quoting *Pocahontas First Corp. v. Venture Planning Group, Inc.*, 572 F. Supp. 503, 506 (D. Nev. 1983)). “Bare bones” assertion of minimum contacts or legal
 21 conclusions unsupported by specific factual allegations will not satisfy the plaintiff’s burden.
 22 *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007). Moreover, the Court may not “assume
 23 the truth” of jurisdictional allegations in a complaint “which are contradicted by affidavit.” *Data
 24 Disc, Inc. v. Systems Tech. Assoc., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977).

26 **1. Defendants Have Never Purposefully Availed Themselves of the
 27 Privileges of Conducting Activities *in* Nevada, Nor Have They
 Purposefully Directed Wrongful Activities *at* Nevada.**

28 The first prong of the three-part test “minimum contacts” for specific jurisdiction contains

1 two considerations, namely whether the defendant has “purposefully availed” himself of the
 2 privileges of conducting activities *in* the state, or alternatively whether the defendant has
 3 “purposefully directed” the complaint’s allegedly wrongful activities *toward* the state. The
 4 “purposeful availment” question is used to evaluate exercises of specific jurisdiction for contract
 5 claims. The “purposefully directed” question is used to evaluate exercises of specific jurisdiction
 6 for tort claims. *Yahoo! Inc. v. La Ligue Contre Le Racisme et L’Antisemitisme*, 433 F.3d 1199, 1206
 7 (9th Cir.2006). While Plaintiffs allege both contract and tort claims, they cannot satisfy their burden
 8 of making a *prima facie* showing of either requirement.

9 **a. Plaintiffs’ Allegations Fail the “Purposeful Availment” Test.**

10 In contract cases, the inquiry for the first prong of the three-part minimum contacts test is
 11 “whether a defendant purposefully avails itself of the privilege of conducting activities or
 12 consummates a transaction in the forum, focusing on activities such as delivering goods or
 13 executing a contract.” *Id.* (internal quotation marks, brackets, and citation omitted); *see also Burger*

14 *King Corp.*, 471 U.S. at 473 (“[W]ith respect to interstate contractual obligations, ...parties who

15 ‘reach out beyond one state and create continuing relationships and obligations with citizens of

16 another state’ are subject to regulation and sanctions in the other State for the consequences of their

17 activities.” (quoting *Travelers Health Assn. v. Virginia*, 339 U.S. 643, 647 (1950))).

18 The mere existence of a “contract alone does not automatically establish minimum contacts
 19 in the plaintiff’s home forum.” *Boschetto, supra*, 539 F.3d at 1017. “[T]he plaintiff must present
 20 evidence of the defendant’s actions in the forum, such as the defendant executing or performing a
 21 contract there.” *Davis v. Koontz*, No. 2:16-cv-01207-GMN-NJK, 2017 U.S. Dist. LEXIS 25517, at
 22 *9 (D. Nev. Feb. 23, 2017) (citation omitted). Courts examine the location of the parties’
 23 negotiations and course of dealing, the location of the parties’ expected performance, and the
 24 location of the defendants’ contemplated future contractual actions and consequences. *Burger King*
 25 *Corp.*, 471 U.S. at 479. The analysis “requires a finding that the defendant ‘[has] performed some
 26 type of affirmative conduct which allows or promotes the transaction of business within the forum
 27 state.’” *Doe v. Unocal Corp.*, 248 F.3d 915, 924 (9th Cir. 2001) (quoting *Sinatra v. Nat'l Enquirer,*
 28 *Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988)).

1 Plaintiffs' conclusory and refuted allegations cannot support imposition of specific
 2 jurisdiction related to any of their contract-based claims. Plaintiffs do not and cannot allege that
 3 Defendants negotiated or signed any of the alleged agreements in Nevada. Nor can Plaintiffs allege
 4 that any of the Defendants' performance obligations were completed, required, or intended to be
 5 performed in Nevada. There were no courses of dealings in Nevada at all as to any contacts. And
 6 none of the agreements alleged in the complaint even mention the state of Nevada.

7 Roux has only been in Nevada one time, while passing through for two days on a road trip
 8 in 2019. Roux Decl. ¶¶ 4 & 13. That was before he had ever met Okhandiar and even began
 9 discussing the possibility of forming the NFT art-related venture. *Id.* ¶¶ 4-5; *see also* Compl. ¶¶
 10 34-35 (alleging that Roux was first retained as an "independent contractor" in 2022). In actuality,
 11 those discussions happened first in Chicago, Illinois in May 2021, then in New York City in
 12 November 2021, and then in Lisbon, Portugal and Warsaw, Poland in May 2022. *Id.* ¶¶ 5-8. Roux
 13 was in Poland in November 2022 when he received and signed a copy of the Non-Disclosure
 14 Agreement that Plaintiffs now accuse him of breaching. Compl. ¶ 36. His work related to the
 15 Remilia venture was performed from his home in Montana or in the various other locations
 16 described above, but never in Nevada. Roux Decl. ¶¶ 4-12. He was not aware that Okhandiar has
 17 supposedly moved to Nevada and claims this state as his permanent residence until after Plaintiffs
 18 filed this lawsuit. *Id.* ¶ 13.

19 Smith has *never* been to Nevada. Smith Decl. ¶¶ 3-4. He was living in his home country of
 20 New Zealand when he was first introduced to Okhandiar by chat and message applications in Spring
 21 2021. *Id.* ¶ 6. Smith's permanent residence is in Auckland, but he was in Wellington, New Zealand
 22 in October 2021 when he received and signed a copy of a Letter of Intent from Okhandiar
 23 recognizing his position as a co-founder of the Remilia venture. *Id.* ¶ 7. At that time, Okhandiar
 24 was in Chicago, Illinois. *Id.* At various times from Fall 2021 until Spring 2023, Smith traveled to
 25 and performed work in furtherance of the venture in Lisbon, Portugal, New York City, Seoul, South
 26 Korea, and Tokyo, Japan. *Id.* ¶¶ 8-12. Smith was at his home in Auckland, and he believed
 27 Okhandiar was in Chicago, when he signed the Non-Disclosure Agreement that Plaintiffs' allege
 28 he breached. *Id.* ¶ 10. Like Roux, Smith did not learn that Okhandiar had moved from Chicago to

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1 Las Vegas until after this lawsuit was filed. *Id.* ¶ 14.

2 Duff has only been to Nevada one time in December 2020 on a trip to Las Vegas to celebrate
 3 a friend's birthday. Duff Decl. ¶ 4. He had previously met Okhandiar during college in Chicago,
 4 Illinois. Okhandiar was living in Chicago when he also attended their same mutual friend's party
 5 in Las Vegas. *Id.* Duff's permanent residence is in New York, but at various times from August
 6 2021 to February 2022, he traveled to and spent time living in Chicago, near where Okhandiar
 7 lived. *Id.* ¶ 6. In addition to meeting in group settings for social reasons, they occasionally met
 8 in-person there to discuss the foundation of the Remilia venture and NFT projects. *Id.* It was not
 9 until October 2021 when Okhandiar provided Duff with a so-called Letter of Intent in Chicago
 10 recognizing Duff's role as a founder of the venture. *Id.* ¶ 7. Duff did not sign the LOI at that time,
 11 but continued to work on the Remilia venture with Okhandiar in Chicago, and on a trip to New
 12 York in November 2021, until February 2022 when Duff moved to and began splitting his time
 13 between New York City and Szczecin, Poland. *Id.* ¶¶ 7-9. Duff met with Okhandiar, Roux and
 14 Smith in Lisbon, Portugal in June 2022, and traveled to Warsaw, Poland in August 2022 to celebrate
 15 the launch of one of the venture's projects. *Id.* ¶ 10-11. Duff was in Szczecin, Poland, and believed
 16 that Okhandiar was in Chicago, in November 2022 when he received and began negotiating the
 17 amended LOI and the NDA that Okhandiar now accuses him of breaching. *Id.* ¶ 12. Duff did not
 18 sign the NDA and amended LOI until December 28, 2022, while he was still in Poland. *See Compl.*
 19 ¶¶ 28 & 32. Okhandiar and Duff, along with Roux and Smith, then met again in April 2023 in
 20 Tokyo, Japan to promote Remilia-Con 2023 before traveling to Jinju, South Korea for Okhandiar's
 21 wedding. Duff Decl. ¶ 13. Like the other Defendants, Duff was not aware that Okhandiar had
 22 moved from Chicago to Las Vegas until after Plaintiffs filed this lawsuit, and he has never done
 23 any work in Nevada. *Id.* ¶ 14.

24 The Complaint includes a single conclusory allegation that Okhandiar supposedly informed
 25 Duff about his intention to form Remilia during the Las Vegas birthday party trip in December
 26 2020. *See Compl.* ¶ 25 (alleging that “[i]n December 2020, Defendant Duff met with Okhandiar
 27 in Nevada where he was first informed about Okhandiar's intentions to start Remilia and discussed
 28 a potential position to perform work for Remilia.”) That is simply not true. That trip was for a

1 birthday celebration for a mutual friend, and they never discussed forming Remilia or Duff's
 2 possible role with its creation. Duff Decl. ¶ 6. Those discussions did not begin until Spring 2021 in
 3 Chicago. *Id.* ¶¶ 5-6. Indeed, Plaintiffs' claim is also belied by the Complaint's other allegations that
 4 Okhandiar did not form the unincorporated Remilia venture until 2021 (Compl. ¶¶ 12 & 14), that
 5 Duff "began to perform work for Remilia" in 2021 (*id.* ¶ 26), and that Duff did not receive the LOI
 6 until October 2021 (Duff Decl. ¶ 7).

7 But even if true, the Complaint's allegation in paragraph 25 that Duff and Okhandiar first
 8 spoke about the possibility of creating the Remilia venture in December 2020 while they happened
 9 to be on an unrelated birthday party trip to Las Vegas is not sufficient to give rise to an exercise of
 10 specific jurisdiction. The Complaint conspicuously does not allege that a discussion was had about
 11 forming the company in Nevada or under Nevada law, or that the company would have offices
 12 there, or that Duff would be expected to move to and perform his services in Nevada. None of the
 13 work was ever performed in Nevada, and when Okhandiar finally incorporated Remilia nearly two
 14 years after that party, he did so (1) while he was living in Chicago, (2) under Delaware law and
 15 with a principal place of business in Delaware, and (3) while Duff was living in and traveling
 16 between New York and Poland. The fact that Duff and Okhandiar just happened to be in Las Vegas
 17 at that time is not a substantial enough connection to support of *prima facie* finding that Duff
 18 purposefully availed himself of the privilege of conducting business in this state. *Burger King*
 19 *Corp.*, *supra*, 471 U.S. at 475, n.18 ("random, fortuitous, or attenuated" contacts will not suffice.);
 20 *Axiom Foods*, 874 F.3d at 1070 ("While a single act can support jurisdiction, the act must first
 21 create[] a substantial connection with the forum. . . . Put differently, some single or occasional acts
 22 related to the forum may not be sufficient to establish jurisdiction if their nature and quality and the
 23 circumstances of their commission create only an attenuated affiliation with the forum." (quoting
 24 other sources)); *accord Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995) (no personal
 25 jurisdiction even though defendant made twenty-four (24) business trips to the forum).

26 Plus, that alleged one-time discussion between Duff and Okhandiar is certainly not evidence
 27 that Roux or Smith—who did not attend the party and who had not even met Okhandiar yet—have
 28 purposefully availed themselves of the privileges of conducting activities in Nevada.

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b. Defendants Have Never Purposefully Directed Activities Here.

Courts in the Ninth Circuit apply the three-part “*Calder* effects test” (see *Calder v. Jones*, 465 U.S. 783, 788-89 (1984)) to decide whether a defendant has purposefully directed activities toward the forum state for an exercise of jurisdiction involving alleged tort claims. This *Calder* effects test focuses on the harm allegedly caused by the defendant. To establish purposeful direction of wrongful activities toward a state, the plaintiff must show that the defendant “(1) commit[ed] an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Best Odds Corp. v. iBus Media Ltd.*, No. 2:13-cv-02008-RCJ-VCF, 2014 U.S. Dist. LEXIS 76096, at *16-17 (citing *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010)). Plaintiffs fail to satisfy at least the second and third *Calder* factors.

The second factor—that the defendant’s acts were expressly aimed at the forum state—focuses on “the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Reflex Media, Inc. v. Successfulmatch.com*, No. 2:18-cv-00259-GMN-GWF, 2019 WL 1177962, at *7 (D. Nev. Mar. 11, 2019) (quoting *Axiom Foods*, 874 F.3d at 1070). It is not enough that the plaintiff can show that a defendant’s conduct had foreseeable effects in the forum state. See *Zuffa, LLC v. Showtime Networks, Inc.*, No. 2:07-CV-00369RLHPAL, 2007 WL 2406812, at *8 (D. Nev. Aug. 17, 2007) (finding the plaintiffs failed to satisfy the “express aiming” requirement to confer specific jurisdiction, even though the defendant knew the plaintiff was based in the forum state because the knowledge was not enough to establish the defendants individually targeted the forum).

The third factor—that the defendant caused the harm intending it to be felt in the forum state—focuses on the defendant’s knowledge. *See Harris Rutsky*, 328 F.3d 1122, 1131 (9th Cir. 2003). Again, it is not the plaintiffs contact with the forum state that drives the jurisdictional analysis. *Walden*, *supra*, 571 U.S. at 289 (reasoning that the court cannot attribute the plaintiff’s contacts with the forum state to the defendant as such would make those connections “decisive” in the jurisdictional analysis). A plaintiff must show some degree of knowledge and intent by the defendant to cause harm in the forum state to ensure that “the *defendant’s* actions connect him to

1 the forum.” *Id.*

2 Here, Defendants did not know Plaintiffs were Nevada citizens or residents at any time
 3 before the Complaint was filed. Remilia is a Delaware company that did not register to do business
 4 as a foreign corporation in Nevada until more than two months after Plaintiffs filed the Complaint
 5 here. *See* Hersey Decl. ¶ 2 & Exh. 1. As far as Defendants knew, Okhandiar was always a resident
 6 of Chicago, Illinois. *See* Duff Decl. ¶¶ 5 & 16; Smith Decl. ¶¶ 6-7, 10 & 14; Roux Decl. ¶ 13.

7 But even if Defendants had knowledge that Okhandiar considered Nevada to be his place
 8 of permanent residence at some time in the past several years, that knowledge is not enough to
 9 support an exercise of specific jurisdiction that Defendants targeted their conduct at this State. *See,*
 10 *e.g. Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1158 (9th Cir. 2006) (the fact that the defendant
 11 once lived in the forum and therefore had knowledge of the plaintiff’s golf resort went to the
 12 foreseeable effect prong of the effects test and was not an independent act that could be interpreted
 13 as being expressly aimed at the forum); *Schwarzenegger v. Fred Martini Motor Co., supra*, 374
 14 F.3d at 807 (the fact that defendant may have known that plaintiff lived in the forum was
 15 insufficient to show express aiming at the forum).

16 The fact that Defendants may have corresponded with Okhandiar while he happened to be
 17 in Nevada is also not sufficient to satisfy the *Calder* effects test. “[U]se of [e]mails, telephone, or
 18 other international communications simply do not qualify as purposeful activity invoking the
 19 benefits and protection of the [forum] state,” unless it creates some substantial connection there.
 20 *Picot v. Weston*, 780 F.3d 1206, 1213 (2015); *Edwards v. Juan Martinez, Inc.*, No. 2:20-cv-00570-
 21 JAD-EJY, 2020 U.S. Dist. LEXIS 174114, at *11 (D. Nev. Sep. 22, 2020) (noting that phone calls
 22 and emails and letters to the forum are insufficient to establish personal jurisdiction).

23 Likewise, Defendants’ alleged use of social media platforms, including Instagram and
 24 Twitter, to market or otherwise promote the Remilia venture is not enough to establish specific
 25 jurisdiction here. *See Reflex Media, Inc. v. SuccessfulMatch.com*, No. 218CV00259GMNEJY,
 26 2020 WL 8459143, at *5 (D. Nev. Dec. 29, 2020), report and recommendation adopted, No.
 27 218CV00259GMNEJY, 2021 WL 240816 (D. Nev. Jan. 22, 2021) (“[N]o court has ever held that
 28 an Internet advertisement alone is sufficient to subject the advertiser to jurisdiction in the plaintiff’s

1 home state.” (quoting *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419 (9th Cir. 1997)); *Surface*
 2 *Supplied Inc. v. Kirby Morgan Dive Sys., Inc.*, No. C 13-575 MMC, at *6 (N.D. Cal. May 29, 2013)
 3 (“Advertising in national publications or on Facebook and Twitter, however, is not sufficient to
 4 support a finding of purposeful availment”).

5 Nor can Plaintiffs satisfy the *Calder* effects test requirements with the conclusory assertion
 6 that Defendants wrongfully accessed Remilia’s virtual server and are supposedly holding its
 7 contents hostage. *See Compl. ¶¶ 10, 15-17.* That virtual server provider, DigitalOcean, is a third-
 8 party with no connection to Defendants or Nevada other than the fact that Okhandiar himself
 9 supposedly chooses to access the server and pay DigitalOcean’s invoices to Remilia from his new
 10 home in Las Vegas. *Axiom Foods*, 874 F.3d at 1068 (“It follows that ‘a defendant’s relationship
 11 with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction.’”); *Fed.*
 12 *Deposit Ins. Corp. v. British-Am. Ins. Co., Ltd.*, 828 F.2d 1439, 1443 (9th Cir. 1987). (“[T]he receipt
 13 of payment alone for services rendered outside the forum state is not sufficient to support personal
 14 jurisdiction.”). DigitalOcean is not a Nevada citizen—it is a Delaware corporation with its
 15 headquarters in New York. Duff Decl. ¶ 18 & Exh. 1 (attaching DigitalOcean’s 10-KA SEC filing).
 16 None of the DigitalOcean servers that Plaintiffs’ complain Defendants have wrongfully access are
 17 located in Nevada. *Id.* ¶ 19 & Exh. 2 (attaching DigitalOcean’s published list of server farm
 18 locations). Nor have Defendants ever accessed any of the virtual servers from Nevada. *See Duff*
 19 *Decl.*, ¶¶ 4, 16, 20; *Smith Decl.* ¶ 4; *Roux Decl.* ¶¶ 4 & 13; *c.f. Republic of Kazakhstan v. Ketebaev*,
 20 No. 17-CV-00246-LHK, 2017 WL 6539897, at *7 (N.D. Cal. Dec. 21, 2017), 2017 WL 6539897,
 21 at *7 (“The mere fact that [a third party]—the company that owns the servers—is headquartered in
 22 California is not enough to establish that [the defendant, a non-California citizen]... expressly aimed
 23 his alleged conduct at California.”).

24 Plaintiffs’ assertion that Defendants are subject to jurisdiction here because they have
 25 supposedly converted or stolen Remilia’s crypto-funds or NFT art is also specious. Plaintiffs do
 26 not allege, much less demonstrate, that any of those allegedly misappropriated funds or art were
 27 ever present in Nevada, or that Defendants ever “seized” it while they or the property was in
 28 Nevada. Indeed, the Supreme Court has flatly rejected such assertions of specific jurisdiction.

1 *Walden*, *supra*, 571 U.S. at 283-289. In *Walden*, the Supreme Court held that a Nevada court did
 2 not have personal jurisdiction over a Georgia police officer who seized money belonging to two
 3 airline passengers at a Georgia airport who were Nevada and California residents because the
 4 defendant's "actions in Georgia did not create sufficient contacts with Nevada simply because he
 5 allegedly directed his conduct at plaintiffs whom he knew had Nevada connections." The Supreme
 6 Court noted that while defendant's conduct of seizing funds in Georgia had an effect on the
 7 plaintiffs in Nevada, that effect did not result from anything that independently occurred in Nevada
 8 and therefore was not a proper basis for jurisdiction.

9 Finally, Plaintiffs cannot establish jurisdiction by asserting that Defendants' pre-litigation
 10 demand letter was sent to them in Nevada. *See Complt.* ¶¶ 10 & 89-90 (asserting that Defendants
 11 furthered the goals of their alleged conspiracy by "causing extortive demands and communications
 12 about those demands to be sent to Remilia in Nevada"). It was not. Defendants' demand letter was
 13 mailed to Okhandiar's and Remilia's last known address in Chicago, Illinois, and to Remilia's agent
 14 for service of process in Delaware. *See Hersey Decl.* ¶ 3. Defendants did not know, expect or intend
 15 the copy of the letter also sent by email to be viewed by Okhandiar in Nevada. And then even after
 16 receiving the letter and during pre-litigation discussions, Plaintiffs never informed Defendants that
 17 Plaintiff now considered Nevada to be his place of permanent residence and that he would
 18 subsequently file a foreign company registration there for Remilia. *Hersey Decl.* ¶¶ 6-7. Plaintiffs'
 19 assertions, even if true, are too insignificant and attenuated to provide sufficient basis for an
 20 exercise of specific jurisdiction. *Cascade Corp. v. Hiab-Foco AB*, 619 F.2d 36, 37-38 (9th Cir.
 21 1980) (finding no specific jurisdiction where defendant visited the forum on two occasions and
 22 knowingly mailed accusatory letters to plaintiff there).

23 **2. Plaintiffs' Claims Do Not Arise Out of Defendants' Limited Nevada
 24 Activities.**

25 The second "minimum contacts" factor considers whether the plaintiff's claim arises out of
 26 or relates to the defendant's forum-related activities. *Schwarzenegger*, 374 F.3d at 802. This means
 27 there must be an affiliation between the forum and the underlying controversy, principally [an]
 28 activity or an occurrence that takes places in the forum State and is therefore subject to the State's

1 regulation. *See Bristol-Myers Squibb, supra*, 582 U.S. at 263.

2 For each of the reasons discussed above, Defendants' lack of any activities in Nevada except
 3 for as a road trip pass-through or attending a weekend birthday party in Las Vegas long before the
 4 parties even discussed the formation of Remilia cannot subject Defendants to specific personal
 5 jurisdiction here. *See Gunn v. Wild*, No. 2:17-CV-72 (JCM) (GWF), 2018 WL 473005, at *11 (D.
 6 Nev. Jan. 18, 2018) (finding the court lacked specific jurisdiction where defendant's contacts with
 7 Nevada from golf trips, trade shows, or management meetings were "best classified as 'random,
 8 fortuitous, or attenuated contacts,' and do not demonstrate that this court can exercise personal
 9 jurisdiction over claims unrelated to these contacts").

10 **3. Exercising Jurisdiction over Defendants Would Be Unreasonable and
 11 Would Not Comport with Fair Play or Substantial Justice.**

12 Even if a plaintiff meets the burden of establishing the first two prongs, which Plaintiffs
 13 here have not done, dismissal is still appropriate if the nonresident defendant presents a compelling
 14 case that the exercise of jurisdiction would be unreasonable. *Schwarzenegger*, 374 F.3d at 802;
 15 *Dole Food Co., supra*, 303 F.3d 1117. For jurisdiction to be reasonable, it must comport with fair
 16 play and substantial justice. *See Burger King*, 471 U.S. at 476. "Reasonableness" comprises the
 17 weighing of seven factors: (1) the extent of the [defendant's] purposeful injection into the forum
 18 state's affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of conflict
 19 with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the
 20 dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum
 21 to the plaintiff's interest in convenient and effective relief; and, (7) the existence of an alternative
 22 forum. *Dole Food*, 303 F.3d at 1114; *see also Roth v. Garcia Marquez*, 942 F.2d 617, 623 (9th Cir.
 23 1991) (holding no one factor is dispositive). All weigh in favor of dismissal.

24 Forcing Defendants to litigate in Nevada would create an extensive burden on Defendants.
 25 In a case such as this, in which "the defendant has done little to reach out to the forum state, the
 26 burden of defending itself in a foreign forum militates against exercising jurisdiction." *Fed. Deposit
 27 Ins. Corp. v. Brit.-Am. Ins. Co.*, 828 F.2d 1439, 1444 (9th Cir. 1987) (internal citation and quotation
 28 marks omitted); *See also Ziegler v. Indian River Cnty.*, 64 F.3d 470, 475 (9th Cir. 1995) ("Where

1 burdens are equal, this factor tips in favor of the defendants because the law of personal jurisdiction
 2 is ‘primarily concerned with the defendant’s burden.’”).

3 As discussed below, the more appropriate venue is Delaware. With regard to its sovereignty,
 4 Delaware courts are extremely well versed in the rules of corporate governance and formation of a
 5 corporation formed in Delaware, and Delaware has an interest in enforcing its own laws. On the
 6 other hand, Nevada’s interest in adjudicating this dispute is minimal, and another forum is available
 7 in Delaware where a lawsuit involving the same parties and facts is already pending. *See Hersey*
 8 Decl. ¶ 9.

9 The importance of the forum to the Plaintiffs’ interests is dwarfed by the importance of the
 10 forum to Defendants. It would be hard to see Defendants having their effective day in court if this
 11 is to be decided by a Nevada court. Delaware (or alternatively even New York or Illinois) have
 12 more interest and more connection to the facts, witnesses and events giving rise to the dispute. The
 13 only parties with any ties to Nevada whatsoever are Plaintiffs, who have only recently moved here.

14 **V.**

15 **THE COURT SHOULD DISMISS OR TRANSFER THE ACTION BECAUSE THE**
 16 **DISTRICT OF NEVADA IS NOT THE PROPER VENUE**

17 Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406(a) authorize dismissal of a
 18 case “when venue is ‘wrong’ or ‘improper.’” *Atl. Marine Const. Co., Inc. v. U.S. Dist. Court for*
19 W. Dist. of Texas, 571 U.S. 49, 53 (2013). Once a defendant challenges venue, the plaintiff bears
 20 the burden of establishing its propriety. *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d
 21 491, 496 (9th Cir. 1979). When considering a motion to dismiss pursuant to Rule 12(b)(3), a court
 22 need not accept the pleadings as true and may consider facts outside of the pleadings. *See Murphy*
 23 *v. Schneider National, Inc.*, 362 F.3d 1133, 1137 (9th Cir. 2004).

24 **A. Venue is Improper under 28 U.S.C. § 1391.**

25 “When venue is challenged, the court must determine whether the case falls within one of
 26 the three categories set out in §1391(b).” *Atl. Marine Const. Co., Inc.*, 571 U.S. at 56. “If it does,
 27 venue is proper; if it does not, venue is improper, and the case must be dismissed or transferred
 28 under §1406(a).” *Id.* Under, 28 U.S.C. § 1391(b) “[a] civil action may be brought in—

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action. 28.U.S.C. 1391(b). "When venue is challenged, the court must determine whether the case falls within one of the three categories set out in §1391(b)."

Consistent with the foregoing, Nevada is an improper venue.

First, this case does not fall within § 1331(b)(1) because all defendants are not residents of the State of Nevada. In fact, none of the Defendants are residents of this State. *See* Compl. ¶¶ 4-6; Duff Decl. ¶¶ 2-4; Smith Decl. ¶¶ 2-4; Roux Decl. ¶¶ 2-4.

Second, this case does not fall within § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims did not occur in Nevada. The crux of Plaintiffs' Complaint rests on a false narrative that Duff, Smith, and Roux acted as "independent contractors" whom Okhandiar accuses of extortion and breaching nondisclosure agreements that they were defrauded into signing with promises that they were cofounders, equity holders, directors and officers of the corporation. None of the parties were residents of Nevada when they negotiated and signed the alleged independent contractor non-disclosure agreements. Duff signed in December 2022, in Szczecin, Poland. Duff Decl. ¶ 12. Smith signed in November 2022, in Auckland, New Zealand. Smith Decl. ¶ 10. Roux signed in November 2022, in Warsaw, Poland. Roux Decl. ¶ 8. Okhandiar was not a resident of Nevada at the time, and all Defendants believed he was in Chicago, Illinois, where he lived. Of course, Plaintiff alleges that Remilia is a Delaware corporation, and was not even registered as a foreign company in Nevada until two months after it filed the Complaint. Hersey Decl. ¶ 2 & Exh. 1.

Lastly, 28 U.S.C. § 1391(b)(3) does not apply because Delaware is a proper district where with jurisdiction over Remilia (as a Delaware corporation) and Okhandiar (as its sole member), and

1 because all Defendants have already consented to jurisdiction there by having already filed the
 2 pending action in that District.

3 **B. The Court Should Dismiss Rather Than Transfer.**

4 In deciding whether to dismiss or transfer, the court has some discretion; *i.e.*, it must find
 5 that transfer, rather than dismissal, is “in the interest of justice.” 28 U.S.C § 1406(a). Although
 6 venue would be proper in the Delaware District Court, this Court should dismiss.

7 It is appropriate to dismiss rather than transfer where a plaintiff appears to be improperly
 8 forum shopping or purposefully attempting to prosecute the case in an improper venue. *E.g.*, *Wood*
 9 *v. Santa Barbara Chamber of Com., Inc.*, 705 F.2d 1515, 1523 (9th Cir. 1983) (“Justice would not
 10 have been served by transferring Wood’s claims back to a jurisdiction that he purposefully sought
 11 to avoid through blatant forum shopping.”); *Johnson v. Payless Drug Stores Nw., Inc.*, 950 F.2d
 12 586, 588 (9th Cir. 1991) (finding district court did not abuse its discretion in dismissing case where
 13 plaintiff disclaimed any intent to prosecute lawsuit in appropriate district); *Anaeme v. United States*,
 14 2012 U.S. Dist. LEXIS 132457, at *4 (E.D. Wash. Sep. 17, 2012) (“it is not in the interests of
 15 justice to transfer an action that was obviously or deliberately filed in the wrong court.”); *see also*
 16 *Nichols v. G.D. Searle & Co.*, 991 F.2d 1195, 1201 (4th Cir. 1993) (“[T]he interest of justice is not
 17 served by allowing a plaintiff whose attorney committed an obvious error in filing the plaintiff’s
 18 action in the wrong court, and thereby imposed substantial unnecessary costs on both the defendant
 19 and the judicial system.”).

20 Here, Plaintiffs have engaged in obvious forum shopping. In response to Defendants’
 21 Demand Letter, Plaintiffs requested that Defendants not file suit or to go public about their claims
 22 while they prepared a response to Defendant’s allegations and the parties considered mediation,
 23 and if necessary, a confidential and binding arbitration. *See* Complaint ¶ 90; Hersey Decl. ¶¶ 4-8.
 24 Despite multiple promises, Plaintiffs never provided that response and instead filed this preemptive
 25 suit here. *Id.* That is precisely the type of obvious and deliberate forum shopping that the transfer
 26 statute is not intended to protect. If Plaintiffs want, they can refile their complaint as counterclaims
 27 in the pending Delaware action.

28 Alternatively, if the Court does elect to transfer, the court should transfer to the District of

1 Delaware because (1) it is where action could have been brought, and (2) there is already a pending
 2 action in Delaware with substantially similar parties and surrounding similar facts. Hersey Decl. ¶
 3 9. In Delaware, unlike in Nevada, the district court has jurisdiction over the parties, and the venue
 4 is proper. *See Shapiro v. Bonanza Hotel Co.* 185 F2d 777, 780 (9th Cir. 1950) (finding that the
 5 action should be transferred under similar language in 28 USC § 1404(a)).⁷

6 The “first to file rule” does not change this analysis, and the Court should not keep the case
 7 here expecting the Delaware Court to dismiss or transfer instead. “Under [the first-to-file] rule,
 8 when cases involving the same parties and issues have been filed in two different districts, the
 9 second district court has discretion to transfer, stay, or dismiss the second case in the interest of
 10 efficiency and judicial economy.” *Cedars–Sinai Med. Ctr. v. Shalala*, 125 F.3d 765, 769 (9th Cir.
 11 1997). However, the rule does not apply when there are circumstances of bad faith anticipatory suit
 12 and forum shopping as Plaintiffs have done here. *Alltrade, Inc. v. Uniweld Prod., Inc.*, 946 F.2d
 13 622, 628 (9th Cir. 1991); *Inherent.com v. Martindale–Hubbell*, 420 F. Supp. 2d 1093, 1097-98
 14 (N.D. Cal. 2006) (“In order for a court to find that the initial suit was anticipatory, the plaintiff in
 15 the first action must have been in receipt of specific, concrete indications that a suit by defendant
 16 was imminent.”). By recognizing these exceptions to the first-to-file rule, courts seek to eliminate
 17 the race to the courthouse door in an attempt to preempt a later suit in another forum. *Guthy-Renker*
 18 *Fitness, L.L.C. v. Icon Health & Fitness, Inc.*, 179 F.R.D. 264, 271 (C.D. Cal. 1998).

19 The Complaint concedes that its action was anticipatory after receiving Defendants’
 20 Demand Letter, which gave Plaintiffs “until 12:00 P.M. EDT, on August 25, 2023—less than 3
 21 days—to respond Defendants’ … demands.” Compl. ¶ 90. After receiving Defendants’ demand
 22 letter and then requesting that Defendants stand-down while Plaintiffs prepared a response and the
 23 parties considered mediation and arbitration, Plaintiffs merely baited Defendants into waiting to
 24 file in Delaware, where it rightfully should be. The first-to-file rule was never designed to reward
 25 a party who requests a party to hold off on filing an action and more time to respond to concrete
 26 and specific intent to sue letters, only to exploit that extended time to file an action first.

27 ⁷ A court may transfer an action under 28 USC § 1406(a) even though it lacks personal jurisdiction
 28 over the defendant. *Goldlawr, Inc. v. Heiman*, 369 US 463, 466 (1962).

1 VI.
2
3**ALTERNATIVELY, THE COURT SHOULD TRANSFER TO DELAWARE IN THE
INTEREST OF JUSTICE AND CONVENIENCE OF THE PARTIES AND WITNESSES**

Even if the court finds venue proper, it should still transfer the action under 28 U.S.C. § 1404(a) “for convenience of parties and witnesses and in the interest of justice.” 28 U.S.C. § 1404(a). The factors relevant to the interests of justice are:

“(1) the location where the relevant agreements were negotiated and executed; (2) the state that is most familiar with the governing law; (3) the plaintiff’s choice of forum; (4) the respective parties’ contacts with the forum; (5) the contacts relating to the plaintiff’s cause of action in the chosen forum; (6) the differences in costs of litigation in the two forums; (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses; and (8) the ease of access to sources of proof.”

Jones v. GNC Franchising, Inc., 211 F.3d 495, 498–99 (9th Cir. 2000). Here, the interests of justice favor Defendants and a transfer to Delaware. Okhandiar formed Remilia as a Delaware LLC, an action is already pending there, and all parties are subject to jurisdiction there. The worst result would be two similar cases involving the same parties and claims in different venues, thereby risking inconsistent results and wasting judicial and party resources. This case should proceed, if at all, in a single venue where the Court is assured that it has jurisdiction over all litigants.

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1
VII.2
CONCLUSION

3 For the foregoing reasons, Defendants respectfully request that the Court dismiss Plaintiffs'
 4 Complaint in its entirety for lack of personal jurisdiction and improper venue. Alternatively, the
 5 Court should transfer the case to the District of Delaware where another case involving the same
 6 parties and issues of fact is already pending and the Court has jurisdiction over all parties.
 7

8 DATED: January 18, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2024, I electronically filed the foregoing
DEFENDANTS' MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(2) &
12(b)(3), OR ALTERNATIVELY TO TRANSFER PURSUANT TO 28 U.S.C. §§ 1406(a) OR
1404(a) with the Clerk of Court for the U.S. District Court, District of Nevada by using the Court's
CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the
CM/ECF system.

/s/ Lyndsey Luxford
An employee of SNELL & WILMER L.L.P.

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